

March 21, 2019

Dear Congressman Schiff:

Thank you for introducing the Abuse of Pardons Prevention Act, H.R. 1627, in the 116th Congress. This legislation is a critical first step in preventing the abuse of the pardon power. We applaud your leadership to protect the rule of law and American democratic institutions.

The Framers included the pardon power in the Constitution as an instrument of mercy and justice. It is foundational to our constitutional system that the President can use this power to correct injustices. Corruption of the pardon power, however, would not only be an affront to the fundamental principle that no person is above the law. It would also color the ability of future deserving pardon recipients from accessing this act of mercy.

There are multiple criminal investigations involving the President, his campaign, his business practices, and his inaugural committee. Recent revelations that a number of the President's associates have been in discussions about possible pardons demonstrate how critical it is that pardons are used for their intended purpose—to ensure justice and mercy—and not to place the President above the law. Last week, some news outlets suggested that President Trump's attorneys “dangled” a pardon to Michael Cohen, an action that could amount to obstruction of justice.¹ Similarly, the President has said that a pardon for his former campaign staffer Paul Manafort “is not off the table.”² Both of these suggested pardons appear corrupt and potentially obstructive of investigations of the President himself.

It is critical that Congress and the courts uphold core limits on the pardon power so the President does not use it to corruptly protect himself from investigation or undermine the Constitution—and so it can continue to serve its intended purpose of justice and mercy.

Therefore, we applaud your careful and measured legislation to ensure transparency and Congressional oversight when a pardon could have the effect of placing the President above the law.

¹ Jonathan Chait, *Michael Cohen Has Email Showing Trump Obstructed Justice by Dangling Pardon*, N.Y. Magazine (Mar. 13, 2019), <https://nypost.com/2018/11/28/trump-says-pardon-for-paul-manafort-still-a-possibility/>.

² Marisa Schultz and Nikki Schwab, *Trump says pardon for Paul Manafort still a possibility*, N.Y. Post (Nov. 28, 2018), <http://nymag.com/intelligencer/2019/03/cohen-email-trump-dangled-pardon-obstruction-justice-mueller.html>.

Additionally, we recommend strengthening your legislation to address specific situations that have arisen. Specifically:

1. We recommend expanding the types of pardons it covers to include other types of self-protective pardons, for example, those offered or dangled to campaign staff or close business associates involved in an ongoing investigation.
2. We recommend requiring the disclosure of “dangled” pardons, such as revealed in recent news reporting with respect to Michael Cohen.
3. We suggest imposing the disclosure/reporting requirement on the White House Counsel’s office in addition to the Attorney General. The report of dangling the Cohen pardon did not go through the Department of Justice but directly through the President’s attorneys.
4. We recommend including a provision that would, in certain cases, automate the appointment of a private attorney in certain instances where the Department of Justice (DOJ) abandons an ongoing prosecution in light of a pardon. DOJ abandoned prosecution after the pardon of Maricopa County Sheriff Joseph Arpaio.³

In addition, we would suggest two areas where technical clarifications could be warranted.

1. We recommend broadening the scope of materials covered to also include materials about the grant of the pardon.
2. We recommend creating an exception for whistleblowers.

Your leadership is critical in protecting the Framers’ intent that the pardon power be used to protect justice and mercy rather than corruptly to insulate a President from investigation. We look forward to working with you to ensure that the President does not use the pardon power to corruptly put himself above the law.

If we can be of support, please contact Aditi Juneja at Protect Democracy by email at aditi.juneja@protectdemocracy.org.

Sincerely,

Protect Democracy
CREW
Republicans for the Rule of Law
MoveOn
Stand Up Republic
Stand Up America

³ Several signatories of this letter are involved in litigation to force this in the pardon of former Maricopa County Arizona Sheriff Joseph Arpaio.

Free Speech for People
Coalition to Preserve, Protect, and Defend

CC:

Chairman Jerry Nadler
Ranking Member Doug Collins